



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. NHTSA-2022-0071 and NHTSA-2022-0072; Notice 1]

Diono LLC, Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: Diono LLC, (Diono), has determined that certain models of its child restraint systems do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Diono filed two noncompliance reports dated June 22, 2022, and later amended one of the reports on August 10, 2022. Diono subsequently petitioned NHTSA on July 21, 2022, and July 22, 2022, and later amended one of the petitions on August 18, 2022, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This document announces receipt of Diono's petitions.

DATES: Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on these petitions. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.

- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID numbers for these petitions are shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Paloma Lampert, General Engineer,
NHTSA, Office of Vehicle Safety Compliance, (202) 366-5299.

SUPPLEMENTARY INFORMATION:

I. Overview: Diono determined that certain Diono Everett NXT Booster Seats do not fully comply with paragraph S5.5.2(e) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213) because they do not contain the certification statement.

Diono filed an original noncompliance report dated June 22, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Diono petitioned NHTSA on July 22, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Diono also determined that certain Cambria, Monterey, Radian, Everett, and Solana, model child restraints do not fully comply with paragraphs S5.5.2, S5.5.2(m)(ii), S5.6.1.7(ii), and S5.8.2, of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213).

Diono filed an original noncompliance report dated June 22, 2022, and later amended it on August 10, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Diono petitioned NHTSA on July 21, 2022, and later amended it on August 18, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Diono's petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petitions.

II. Child Restraint Systems Involved: Approximately 2,642 Diono Everett NXT Booster Seats, manufactured between October 1, 2020, and March 31, 2021, are potentially involved because they do not comply with S5.5.2(e) of FMVSS No. 213.

In addition, approximately 697,286 Cambria 2, Monterey XT, Monterey 4DXT, Monterey 5, Radian 3R, Radian 3RX, Radian 3RXT, Radian 3QX, Radian 3QXT, Radian 3QXT+, Radian 3RXT Safe+, Everett NXT¹, Solana, and Solana 2, child seat restraints manufactured between July 12, 2021, and July 21, 2022, are potentially involved.

III. Noncompliances: Diono explains that the labels on the subject Everett NXT Booster Seats are missing the statement “This child restraint system conforms to all applicable Federal motor vehicle safety standards,” and therefore the Everett NXT Booster Seats do not fully comply with S5.5.2(e) of FMVSS No. 213.

The subject Cambria 2, Monterey XT, Monterey 4DXT, Monterey 5, Radian 3R, Radian 3RX, Radian 3RXT, Radian 3QX, Radian 3QXT, Radian 3QXT+, Radian 3RXT Safe+, Solana, and Solana 2 child restraints are affixed with labels that were printed with white text on a black background rather than black text on a white background, and therefore, do not fully comply with S5.5.2 of FMVSS No. 213.

The subject Cambria 2, Monterey XT, Monterey 4DXT, Radian 3R, Radian 3RX, Radian 3RXT, Radian 3QX, Radian 3QXT, Everett NXT, Solana, and Solana 2 child restraints were sold with printed instructions that provided an incorrect web address to access the electronic registration form, and therefore, do not fully comply with S5.6.1(7)(ii) and S5.8.2 of FMVSS No. 213.

IV. Rule Requirements: Paragraphs S5.5.2, S5.5.2(e), S5.5.2(m)(ii), S5.6.1.7(ii) and S5.8.2 of FMVSS No. 213 include the requirements relevant to the petitions. Among other required

¹ According to Diono’s petition, the Everett NXT model does not comply with S5.6.1.7(ii) and S5.8.2 whereas the other models listed also do not comply with S5.5.2 and S5.5.2(m)(ii) because the required information is not printed on black text with white background.

information, each add-on child restraint must be permanently labeled on a white background with black text with the following statements:

- “This child restraint system conforms to all applicable Federal motor vehicle safety standards.”
- “Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [preceding four words are optional], and the restraint's model number and manufacturing date to (insert address) or call (insert a U.S. telephone number) or register online at (insert Web site for electronic registration form). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.NHTSA.gov>.”

The written instructions required to be provided with each child seat restraint must include the statement provided by S5.6.1.7(i) or S5.6.1.7(ii). If a manufacturer opts to provide a web site on the registration card, the manufacturer must include the statement given in S5.6.1.7(ii) which states: “Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (insert address) or call (insert telephone number) or register online at (insert Web site for electronic registration form). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.NHTSA.gov>.” S5.8.2 specifies that the electronic registration form must be accessed directly by the web address that the manufacturer printed on the attached registration form and the form must appear on screen without any further keystrokes on the keyboard or clicks of the mouse.

V. Summary of Diono’s Petitions: The following views and arguments presented in this section, “V. Summary of Diono’s Petitions,” are the views and arguments provided by Diono.

They have not been evaluated by the Agency and do not reflect the views of the Agency. Diono describes the subject noncompliances and contends that the noncompliances are inconsequential as they relate to motor vehicle safety.

Diono Everett NXT Booster Seats:

Diono explains that while the Diono Everett NXT Booster Seats do not contain one of the statements required by S5.5.2, the noncompliance is inconsequential because the instruction manual provided with them does contain the missing statement, and consumers can contact Diono's customer service department if they have any questions about product safety or compliance with FMVSSs. Therefore, Diono argues that consumers have an "adequate and alternative means of being informed of the compliance status." Diono references NHTSA's decision on a petition submitted by Mazda, in which the noncompliance was deemed consequential; however, Diono contends that NHTSA's reasoning (noncompliances pertaining to labelling are inconsequential when they do not cause any misunderstanding, especially where other sources of correct information are available) supports the granting of the subject petition.

Furthermore, Diono believes that it is unlikely consumers would conclude that the subject Diono Everett NXT Booster Seats do not comply FMVSS No. 213, "given that no child restraint can be legally sold in the United States without such compliance." Diono contends that consumers would instead "assume that products on the market meet mandatory safety standards, whatever those standards might be."

Cambria, Monterey, Radian, Everett, and Solana Models

Diono believes that the noncompliant text and background colors used on the labels affixed to the subject Cambria, Monterey, Radian, and Solana model child restraint systems are inconsequential to motor vehicle safety because Diono claims that the colors used still fulfill the purpose of the requirement. Diono states that the noncompliant labels use the same black and white contrast that is required but in reverse and the purpose of the requirement to conspicuously provide the information on the label is fulfilled.

Diono states that “[t]o ensure compliance with the regulation and before manufacture of the affected child restraints, Diono proactively had all labels reviewed and approved by Calspan Corporation.” Diono included copies of the reports prepared by Calspan with its petition as Exhibits B through O. Diono states that Calspan concluded that the affected labels complied with FMVSS No. 213 and contends that “Calspan’s finding that the affected labels complied with FMVSS [No.] 213 supports the conclusion that Diono’s particular use of the chosen colors provides the necessary level of conspicuity.”

Diono also states that it has corrected future production to use a label with the black text on white background, as required by S5.5.2. Diono notes that NHTSA has denied a petition submitted by Baby Jogger, LLC, concerning a similar noncompliance; however, Diono states that the labels at issue in that petition were difficult to read and “did not fully comply with numerous other provisions of S5.5.2 concerning font, capitalization, and incorrect sequencing of text and warnings.” Unlike the noncompliant labels in Baby Jogger, LLC’s petition, Diono believes that its noncompliant labels should be found inconsequential to motor vehicle safety because all the required information is still present and the label is “conspicuous and legible.”

In both petitions, Diono states that NHTSA has previously explained that it might consider a labeling noncompliance to be inconsequential in situations where the label has a misspelled word, or is printed in the wrong format or wrong type size if the noncompliance does not cause any misunderstanding, especially where other sources of correct information are available.² Furthermore, Diono states that it has not received any reports or inquiries regarding the subject noncompliances.

Diono also determined that the written instructions sold with the affected child restraint systems provided a web address that did not directly access the electronic registration form. Diono explained that the noncompliance occurred because “an IT contractor who was updating

² Diono cites Mazda North American Operations; Denial of Petition for Inconsequentiality; 86 FR 7170-01 (Jan. 26, 2021).

Diono's website failed to comply with the requirement not to disturb the registration page."

Diono says that it has corrected the issue by redirecting the provided web address to allow the consumer to access the registration form as required. Diono believes that this noncompliance does not "negatively impact motor vehicle safety because the availability of an electronic registration form on the website (1) is voluntary by regulation and (2) could still be located and completed by consumers in an effective manner." Diono further explains that consumers affected by this noncompliance were still able to navigate to Diono's home webpage via the incorrect web address where the consumer could access the link to the registration form.

According to Diono, the purpose of the requirement to provide a web address to access the registration was still fulfilled "even if the manner by which consumers temporarily did this did not fully comply" with the requirements provided in FMVSS No. 213. Diono notes that it was "actively receiving electronic registrations through its website throughout the time period at issue." Therefore, Diono states that consumers were "consistently able to redirect themselves to the appropriate registration link and effectuate registration." Diono says that it did not receive any reports that consumers were unable to register their child restraint system.

Diono further contends that "it is not unusual for any business to experience extended, unexpected and even undiagnosed downtime or impaired function of pages on its website, which it learns of only when reported, and promptly remedies." Diono states that consumers are able to effectively navigate web sites to find the intended web page, which it says, "may complicate the supplier's ability to recognize such issues in the first place." Moreover, Diono states, "If technical difficulties with a supplier's registration website were consequential to motor vehicle safety, a motor vehicle equipment supplier would need to file a Part 573 report every time their website experienced a material service interruption or had a miscommunication with its web development team."

Diono concludes by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and its petitions to be exempted from providing notification

of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject child restraints that Diono no longer controlled at the time it determined that the noncompliances existed. However, any decision on these petitions does not relieve child restraint distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child restraint systems under their control after Diono notified them that the subject noncompliances existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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